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No. 82-905

In the Supreme Court of the United States

OCTOBER TERM, 1982

SOONER FEDERAL SAVINGS AND LOAN ASSOCIATION, KAY COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION, and FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAWTON,
Appellants,

VERSUS

OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA,
Appellees.

On Appeal From the Supreme Court of The State of Oklahoma

SUPPLEMENTAL BRIEF ON JURISDICTION

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April, 1983

QUESTIONS PRESENTED

1. Did the Supreme Court of Oklahoma err in determining that 12 U.S.C. § 1433 does not deprive the State of Oklahoma of the right to tax dividends disbursed by the Federal Home Loan Bank, pursuant to 12 U.S.C. § 1421, *et seq.*, to its stockholders, Appellants herein, as income under the provisions of the Oklahoma Income Tax Code?

2. Does 31 U.S.C. §§ 742 and 742a. provide an exemption from state taxation for dividends paid to stockholders from the net earnings of the Federal Home Loan Bank accruing as a result of the Bank's profitable operations?

DESIGNATION OF CORPORATE RELATIONSHIPS

This is its second Designation of Corporate Relationships. The Designation that was filed originally is currently accurate.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

DESIGNATION OF CORPORATE REALTIONSHIPS i

NEW CASES AND MATERIALS NOT AVAILABLE FOR INCLUSION IN THE JURISDICTIONAL STATEMENT 1

COMMENTS RELATING TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING DISMISSAL 6

CONCLUSION 10

CERTIFICATE OF SERVICE follows Brief.

TABLE OF AUTHORITIES

Cases	PAGE(S)
First Federal Savings and Loan Association v. *Department of Revenue, et al.*, 654 P.2d 496 (Mont. 1982), *certiorari requested* (U.S. Mar. 4, 1983) (No. 82-1476)	4
Laurens Federal Savings and Loan Association v. *South Carolina Tax Commission*, 365 U.S. 517 (1961)	8
Memphis Bank & Trust Company v. *Riley C. Garner, Shelby County Trustee, et al.*, 51 U.S.L.W. 4104	2
New Jersey Realty and Title Ins. Co. v. *Division of Tax Appeals*, 338 U.S. 665 (1950)	6
Pittman v. *Home Owners' Loan Corp.*, 308 U.S. 21 (1939)	9
Smith v. *Davis*, 323 U.S. 111, 89 L.Ed. 107, 65 S.Ct. 157 (1944)	6
Statutory Provisions	
12 U.S.C. § 1421	i
12 U.S.C. § 1433	i
12 U.S.C. § 1433 (Section 13, Federal Home Loan Bank Act)	6
12 U.S.C. § 1426 (Section 6(c), Federal Home Loan Bank Act)	7
31 U.S.C. § 742	i, 2-3

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NEW CASES AND MATERIAL NOT AVAILABLE FOR INCLUSION IN THE JURISDICTIONAL STATEMENT

1. On the 24th day of January, 1983, the United States Law Week published on page 4104 of Volume 51, a decision by this Honorable Court styled *Memphis Bank & Trust Company* v. *Riley C. Garner, Shelby County Trustee, et al.*, Docket No. 81-1613. This decision held invalid a Tennessee bank tax which was levied on the net earnings of a bank, which earnings included interest income on obligations of states other than Tennessee as well as the United States

and its instrumentalities. This Court characterized the tax on the federal obligations as discriminatory as provided in 31 U.S.C. § 742. Consequently, the rationale and interpretation by this Court expressed in its opinion in *Memphis Bank* is applicable and controlling in this situation.

Initially, this Court in *Memphis Bank* recognized that the exemption established in 31 U.S.C. § 742 is applicable not only to such obligations as Treasury bills and notes, "but also to the obligations of such instrumentalities of the United States as Federal Credit Banks." See *Memphis Bank & Trust Co.* v. *Garner, supra,* p. 4105 (footnote 5 therein). Indeed, the opinion of this Court in *Memphis Bank* continues by holding that the immunity from taxation contained in 31 U.S.C. § 742 extends, not only to the obligation itself, but also to the income derived from the various types of federal obligations held by the Memphis Bank & Trust Co. In so holding, this Court opined at page 4105: "Because no federal statutes have 'otherwise provided', § 742 applies to income from the types of federal obligations held by Memphis Bank."

Appellants would submit that its factual situation is not significantly different from that found in *Memphis Bank* in that the *Memphis Bank* decision focused on that portion of 31 U.S.C. § 742 which prohibits all but nondiscriminatory franchise or other nonproperty taxes imposed on otherwise exempt federal obligations.[1] Appellants' situation, however,

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[1] Section 742 provides:

> All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon,

is somewhat more basic for the reason that the issue here does not involve a nondiscriminatory franchise or other nonproperty tax, but encompasses a state income tax directly imposed upon the income derived from a statutorily exempt federal obligation, *i.e.*, dividends paid on Federal Home Loan Bank stock. Therefore, under this Court's rationale, outlined above, the income attributable to the dividends on Federal Home Loan Bank stock should be exempt from state taxation.

In conclusion, Appellants would argue that the statutory language of 31 U.S.C. § 742, which supported reversal of the decision of the Tennessee Supreme Court in *Memphis Bank*, is as strongly supportive of Appellants' present position as it was of the position of Memphis Bank & Trust Co. Here, as in the *Memphis Bank* case, the statute clearly and unequivocally exempts from state, municipal or local taxation "all stocks, bonds, Treasury notes, and other obligations of the United States . . ." to include, as this Court determined, the income derived from such obligations. Furthermore, there are no federal statutes which have "otherwise provided" for taxation of these obligations by state, local or municipal authority. Therefore, it is Appellants' position that the statutory language proscribes and prohibits the State of Oklahoma from imposing a state income tax on the income attributable to dividends paid to Appellants based upon their stock ownership in the Federal Home Loan Bank.

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[1] (Continued)

or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes.

2. On the 6th day of December, 1982, the Supreme Court of the State of Montana denied a Petition for Rehearing by the Department of Revenue (State of Montana), and, thereby, allowed to stand that court's previously issued opinion of September 23, 1982, in a case styled *First Federal Savings and Loan Association, et al.* v. *Department of Revenue, et al.*, 654 P.2d 496 (Mont. 1982), *certiorari requested* (U.S. Mar. 4, 1983) (No. 82-1476). In this decision, the Supreme Court of Montana held *inter alia* that income received on exempt federal obligations by the taxpayers, First Federal Savings and Loan Association, et al., was not includable in net income for purposes of calculating the Montana corporation license tax.

In the opinion cited above, the taxpayers contended as one of their positions that income derived from dividends on Federal Home Loan Bank stock, in the amount of $48,-013.00, was exempt from the Montana corporation license tax. The Montana corporation license tax imposes a tax on corporations for the privilege of doing business within the State and is levied as a percentage of corporate net income.

The basis of the taxpayers' claim was that 31 U.S.C. § 742 specifically excluded such income from state taxation. In agreeing that the dividend income in question was exempt under the provisions of 31 U.S.C. § 742, the Supreme Court of Montana held that 12 U.S.C. § 1433 and 31 U.S.C. § 742 "clearly exempt the interest income of the federal obligations involved in the instant case from the Montana corporation license tax." (See *First Federal Savings and Loan, et al.* v. *Department of Revenue, supra*, at page 499.) Moreover, the Supreme Court of Montana had no difficulty

in characterizing interest or a related type of income, such as dividends from the Federal Home Loan Bank, as being included within the exemption statutes cited above. Finally, the court concluded that the State could not tax indirectly, by redefining the basis of the tax, what it could not tax directly by virtue of the federal exemption statutes. (See *First Federal Savings and Loan, et al.* v. *Department of Revenue, supra*, at page 498.)

Appellants would submit that the *First Federal* case presents a direct conflict of authorities between the Supreme Courts of two states. Moreover, the opinions of these two State Supreme Courts clearly define a question which is ripe for decision by this Honorable Court to prevent an inconsistent application of the exemption statute by the several states, and to resolve the conflict in the interpretation of federal statutes. Appellants assert that this divergence of opinion presents a substantial federal question.

In addition, Appellants would argue that the conclusion reached in the Montana decision is the better reasoned decision, if, for no other reason, than the fact that the opinion of the Supreme Court of Oklahoma did not even consider, or otherwise note, the federal exemption contained in 31 U.S.C. § 742 despite its being relied upon and briefed by the parties. Federal statutes are not enacted by the Congress of the United States to be followed or disregarded at the whim of the several states, and the action of the Supreme Court of Oklahoma in totally ignoring a federal exemption statute with respect to exempt income items is an absolute abuse of federal law.

COMMENTS RELATING TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING DISMISSAL

In its Brief of Amicus Curiae, the United States (A.C. footnote 2 and pages 2-4) apparently considers that Appellants are claiming that the exemption found in Section 13, Federal Home Loan Bank Act, 12 U.S.C. § 1433, applies only to *their* dividends received by virtue of their ownership of stock in the Federal Home Loan Bank. In this respect, the perception of the United States is erroneous. Appellants are claiming the exemption provided by 12 U.S.C. § 1433 against *all* state taxation of those items enumerated within the statute. Appellants submit that this statute specifically exempts all items enumerated therein as well as the income derived therefrom. See *New Jersey Realty & Title Ins. Co.* v. *Division of Tax Appeals*, 338 U.S. 665, 675-676 (1950).

In its Brief of Amicus Curiae, the United States continues by focusing this Court's attention on the fact that there is no language which exempts from taxation dividends on Federal Home Loan Bank stock (A.C. pp. 6-7). The United States points out that nothing in 12 U.S.C. § 1433 "expressly precludes the taxation by Oklahoma of dividends paid on shares of Federal Home Loan Bank stock." Indeed, Appellants would respond that, in a somewhat analogous situation, this Court has recognized:

> [The Congressional intent] . . . to prevent taxes which diminish in the slightest degree the market value or the investment attractiveness of obligations issued by the United States in an effort to secure necessary credit . . . (See *Smith* v. *Davis*, 323 U.S. 111, 117, 89 L.Ed. 107, 111, 65 S.Ct. 157 (1944).)

In constructing and enacting statutes, Congress does not and cannot envision every type of obligation that may be used by the Government or its agencies to facilitate its statutorily mandated functions. Congress, of necessity, provides only a general statutory exemption from state taxation in certain areas. Therefore, although Congress may not specifically delineate an item as being included within an exemption statute, this should by no means be regarded as an indication that Congress intended that the item was to be denied exempt status under the law. Finally, Appellants believe that while this particular statute does not expressly list, enumerate or otherwise specify the entire group of investment obligations, or income therefrom, included within the meaning of 12 U.S.C. § 1433, the language, legislative history and case law relating to this statute does indicate that taxation of these investment instruments, and the income derived therefrom, is expressly denied to the several states.

With respect to the argument that the United States does not believe that the dividends paid on shares of Federal Home Loan Bank stock are derived from earnings of the Federal Home Loan Bank (A.C. p. 7), Appellants would argue that this position is in direct contravention of basic corporate law. If the dividends paid on the stock are not directly related to the earnings of the Federal Home Loan Bank, then presumably these payments would not be characterized as "dividends", but rather as a liquidation payment with the attendant tax consequences under federal and state law. It is basic to the Federal Home Loan Bank's system that member associations subscribe and maintain shares in the Federal Home Loan Bank. [See Section 6(c) of the Federal Home Loan Bank Act.] Dividends are paid

on the basis of the number of shares held in the Federal Home Loan Bank. It is beyond Appellants' understanding that the United States could contend that these dividends are not related to the earnings of the Federal Home Loan Bank, and that state taxation of these dividends does not constitute an indirect taxation of the income of the Federal Home Loan Bank.

Finally, the United States apparently believes that the opinion of this Court in *Laurens Federal Savings and Loan Association* v. *South Carolina Tax Commission*, 365 U.S. 517 (1961), merely invalidated a state documentary stamp tax imposed on promissory notes executed by federal savings and loan associations because it was a tax on an advance made by the Federal Home Loan Bank (A.C. pp. 7-8). Appellants contend that the United States has completely misconstrued the *Laurens* opinion and this Court's interpretation of 12 U.S.C. § 1433 contained therein.

In the *Laurens* opinion, this Court held that the tax was, in effect, being levied on the advance mechanism system inherent to the Federal Home Loan Bank. In this regard, this Court observed, in connection with examining the breadth of the exemption, that:

> [The 1932 Act] . . . set up a system of federally chartered Home Loan Banks for the purpose, as stated in the House and Senate Committee Reports, of placing "long-term funds in the hands of local institutions" in order to alleviate the pressing need of home owners for "low-cost, long term installment mortgage money" and "to decrease cost of mortgage money" with a resulting benefit to homeownership in the form of lower costs and more liberal loans. See *Laurens, supra*, pp. 521-522.

As a result, the tax invalidated in the *Laurens* case was not upon the advances, as alleged by the United States, but on the entire process whereby advances were made through the system established for the Federal Home Loan Bank.

Furthermore, the United States contradicts itself in this same paragraph (A.C. pp. 7-8) when, in its discussion of this Court's Opinion in *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21 (1939), the United States concedes that the purchase of stock "is an integral part of the entire advance mechanism of the Federal Home Loan Bank . . ." Appellants submit that if the purchase of this stock is an integral part of the entire advance mechanism system of the Federal Home Loan Bank, then it is only logical to conclude that taxation of the dividends paid on the stock, itself, is likewise proscribed by the statute.

With respect to the arguments advanced by the United States in connection with 31 U.S.C. § 742 (A.C. pp. 9-10), Appellants would refer this Court to its discussion of recent case law cited above.

CONCLUSION

In conclusion, Appellants assert that the rationale submitted by the United States in support of its Brief of Amicus Curiae to this Court does not warrant the conclusion contained therein. Additionally, Appellants submit this case is ripe for decision, and should be accorded plenary review by this Court.

Respectfully submitted,

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April, 1983

CERTIFICATE OF SERVICE

I, E. John Eagleton, one of the attorneys for Sooner Federal Savings and Loan Association, Kay County Federal Savings and Loan Association, and First Federal Savings and Loan Association of Lawton, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of ....., 1983, I served three copies of the Supplemental Brief on Jurisdiction contained herein on the Oklahoma Tax Commission (State of Oklahoma), by mailing in a duly addressed envelope, certified mail prepaid, to Donna E. Cox, *Esq.*, Counsel for the Oklahoma Tax Commission, at the offices of the Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Oklahoma 73194, and on the United States, by leaving a copy thereof at the office of Frank Keating, *Esq.*, United States Attorney for the Northern District of Oklahoma, at Room 460, Federal Building, Tulsa, Oklahoma, and by mailing a copy in a duly addressed envelope, certified mail, postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530.

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